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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

GOOGLE INC., a Delaware corporation, Plaintiff, v. AFFINITY ENGINES, INC., a Delaware corporation, Defendant.	CASE NO.: C-05-00598 JW **OPPOSITION TO NOTICE OF PENDENCY OF OTHER ACTION** **Local Rule 3-13** Hon. James Ware

Dockets.Justia.com

On March 2, 2005, defendant Affinity Engines, Inc. (AEI) filed a Notice of Pendency of Other Action. Pursuant to Local Rule 3-13(c), plaintiff Google Inc. ("Google") hereby files this opposition to AEI's notice.

AEI is correct that there is a case entitled *AEI v. Google et al.*, Case No. 104 CV 020368, pending before Judge William J. Elfving in Santa Clara County Superior Court. However, the current case raises different issues. In the state court case, AEI claims that it owns certain trade secrets, embodied in software, that were misappropriated by Google, a Google subsidiary (Orkut.com LLC), and a Google employee. AEI alleges claims for misappropriation of trade secrets and a variety of other claims all based upon the alleged confidentiality of information embodied in the software.[1] In contrast, Google claims in the current case that AEI has infringed Google's federally-registered copyright, that AEI has wrongfully claimed ownership of Google's copyrighted material, and that Google is entitled to copyright remedies. The copyright claims at issue in the current case are governed by federal law and are not at issue and/or cannot be resolved by the state court.

As Google will explain in detail in its forthcoming opposition to AEI's motion to stay this action, the copyright issues in this case (1) provide exclusive federal jurisdiction; and (2) must be addressed and determined first before any ruling on the state court trade secret claim can be made. Accordingly, the federal action must proceed first, and AEI's motion for a stay of this action should be denied.

Dated: March 15, 2005

WILSON SONSINI GOODRICH & ROSATI
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By: /s/ David H. Kramer
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[1] Because AEI's other state law claims are preempted by the Uniform Trade Secrets Act, Google has noticed a motion in the state court case for dismissal of these other claims, which is scheduled to be heard on June 2, 2005.